

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of M. S. VALENTINE, Minor.

UNPUBLISHED

March 20, 2014

No. 317258

Wayne Circuit Court

Family Division

LC No. 06-456539-NA

Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Respondent-father appeals from the trial court order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (h), and (j). Because the trial court did not clearly err by finding that petitioner established statutory grounds for termination by clear and convincing evidence or that termination was in the child's best interests, we affirm.

In September 2006, the court assumed jurisdiction over the child because of the mother's housing issues. The child was placed in respondent's care and he was ordered to complete parenting classes, maintain suitable housing, and obtain legal income. In January 2007, respondent had a car accident with the child in the car. Respondent was intoxicated at the time of the accident and was charged with operating a vehicle while intoxicated, child endangerment, and leaving the scene of an accident. He was sentenced to five months in jail. Because of this situation, the court granted a request by petitioner to change the child's placement. Respondent moved out of the home and the child remained there with her paternal grandmother. Substance abuse services were made a part of respondent's treatment plan.

In May 2009, petitioner initiated termination proceedings. The trial court terminated the mother's parental rights but ordered respondent to continue his treatment plan. The court returned the child to respondent's care in November 2010. Less than two weeks later, respondent was arrested for drunk driving and jailed. Once again, the child was in the car at the time of respondent's arrest. Respondent's blood alcohol level was three times the legal limit. The child was removed from respondent's care and placed in foster care. Respondent was sentenced to a minimum of 18 months in prison for the drunk-driving charge. In April 2013, the court authorized a termination petition and, following a hearing, terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g), (h), and (j).

"This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if,

although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *Id.*

A trial court may terminate a respondent’s parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) that termination is in the children’s best interests. MCR 3.977(F); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2001). “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court terminated respondent’s rights under MCL 712A.19b(3)(g), (h), and (j), which provide:

(3) The court may terminate a parent’s parental rights to a child if the court finds, but clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child’s proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

Petitioner established statutory grounds for termination under MCL 712A.19b(3)(g) and (j). Respondent endangered his child by drinking and driving with her in the car on at least two occasions while the child was under the court’s jurisdiction. At the time of his most recent arrest, respondent’s blood alcohol level was three times the legal limit. Respondent also has two other drunk-driving convictions. Outside of his criminal history, there was evidence that respondent has a serious alcohol abuse problem. Respondent was given opportunities in both 2006 and 2010 to show that he could safely parent his child and conquer his substance abuse issues. Nonetheless, on both occasions he drove while intoxicated with the child in the car; the second time, he did so less than two weeks after the child was placed with him. Both social workers involved in this case felt there would be a risk of harm to the child if she were returned to respondent’s care. Given his repeated endangerment of his child despite court involvement,

the trial court did not clearly err by finding that petitioner established statutory grounds for termination under MCL 712A.19b(3)(g) and (j) by clear and convincing evidence.

We also affirm termination under MCL 712A.19b(3)(h). In *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010), our Supreme Court stated:

MCL 712A.19b(3)(h) authorizes termination only if *each* of three conditions is met:

The parent is imprisoned for such a period that [1] the child will be deprived of a normal home for a period exceeding 2 years, *and* [2] the parent has not provided for the child’s proper care and custody, *and* [3] there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

The combination of the first two criteria — that a parent’s imprisonment deprives a child of a normal home for more than two years *and* the parent has not provided for proper care and custody — permits a parent to provide for a child’s care and custody *although the parent is in prison*; he need not *personally* care for the child. The third necessary condition is forward-looking; it asks whether a parent “will be able to” provide proper care and custody within a reasonable time. Thus, a parent’s past failure to provide care because of his [or her] incarceration also is not decisive.

Although respondent claimed his release was imminent, he had made similar claims in the past and the evidence suitable established that he could remain imprisoned until 2020.¹ Respondent had not offered anyone suitable to care for his child while he was in prison. Respondent was given numerous chances to show he could safely parent his child but continued to drink and drive with the child in the car. Accordingly, the trial court did not clearly err by finding that petitioner established statutory grounds for termination under MCL 712A.19b(3)(h) by clear and convincing evidence.

Lastly, respondent argues that the trial court clearly erred by finding that termination of his parental rights was in the child’s best interests. “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home[.]” *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Respondent testified that he cared for his child ever since the mother’s rights were terminated and that he loved the child. However, respondent had not actually seen his daughter since his arrest in November 2010. Due to his imprisonment, respondent’s visitation with his child consisted of a 15-minute phone call every two weeks and the foster care worker involved in this case felt that the parent/child bond had weakened. The

¹ We note that, as of February 2014, Michigan’s Offender Tracking Information System indicates that respondent is still imprisoned.

evidence also established that the child needed permanency and stability and a family was interested in adopting her. The social workers opined that the child would be at a substantial risk of harm if returned to respondent's care. In sum, respondent had repeatedly endangered his child and was now in prison, and he had not provided any suitable plans for her care. Accordingly, the trial court did not clearly err by finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Kathleen Jansen

/s/ Donald S. Owens

/s/ Douglas B. Shapiro